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Filing date: **04/07/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91226247
Party	Plaintiff Anavex Life Sciences Corp.
Correspondence Address	THOMAS M SAUNDERS POL SINELLI PC 100 CAMBRIDGE STREET, TWENTY-FIRST FLOOR BOSTON, MA 02114 UNITED STATES dcdocketing@novakdruce.com, tsaunders@polsinelli.com
Submission	Motion to Suspend for Civil Action
Filer's Name	Thomas M. Saunders
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Signature	/Thomas M. Saunders/
Date	04/07/2016
Attachments	MOTION TO SUSPEND.pdf(145096 bytes) Complaint court dated.pdf(2724004 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

ANAVEX LIFE SCIENCES CORP.,

Opposer,

v.

**ANIVAX INC. DBA ANIVAX
CORPORATION ARIZONA,**

Applicant.

In the matter of Serial No.86/540771

For the mark ANIVAX

Published on February 9, 2016

Opposition No.: 91226247

**OPPOSER'S MOTION TO SUSPEND THE
PROCEEDINGS PENDING CIVIL LITIGATION**

Pursuant to 37 CFR §2.117(a) and TBMP § 510.02(a), Opposer, Anavex Life Sciences Corp. ("Opposer"), hereby requests that the Trademark Trial and Appeal Board (the "TTAB" or the "Board") suspend the present proceeding until the final determination of *ANAVEX LIFE SCIENCES CORP. v. ANIVAX, INC DBA ANIVAX CORPORATION ARIZONA*, 4:16-cv-00150-JAS, a civil action before the United States District Court of Arizona ("Civil Action"), because the Civil Action will have a direct bearing on the instant proceeding.

On March 11, 2016 Opposer filed a complaint in the United States District Court of Arizona against ANIVAX, INC DBA ANIVAX CORPORATION ARIZONA for false designation of origin under the Lanham Act and unfair competition and a demand for jury trial. In support of this motion, Opposer submits herewith a copy of the Complaint for False Designation of Origin Under the Lanham Act and Unfair Competition; Demand for Jury Trial.

In the Complaint, Opposer requests that United States District Court of Arizona

► Grant an injunction pursuant to 15 U.S.C. § 1116, enjoining and restraining Anivax and its agents, servants, and employees from directly or indirectly using the name ANIVAX or any other mark, word, or name similar to Plaintiff's mark which is likely to cause confusion, mistake or to deceive;

► Order that all labels, signs, prints, packages, wrappers employing the ANIVAX mark be promptly destroyed

► Order Anivax to abandon United States Application Ser. No. 86/540771 and not seek to register a trademark containing the "ANIVAX" element; and

► Order ANIVAX to transfer ownership of the domain name anivax.com to plaintiff.

In its Opposition, Opposer, Anavex Life Sciences Corp. claims that it has and will be damaged by the ANIVAX trademark and bases those claims on its ownership of

Application Serial No. 86/768671 for the mark ANAVEX in connection with pharmaceutical preparations for the treatment of neurological conditions, including Alzheimer's disease in International Class 5, filed September 25, 2015, based on a date of first use at least as early as January 1, 2007; and,

Application Serial No. 86/768699 for the mark ANAVEX in connection with pharmaceutical research and development in International Class 42 use of the ANIVEX mark for various goods and services, filed September 25, 2015, based on a date of first use at least as early as January 1, 2007; and,

On its common law rights arising from Anavex being in the business of pharmaceutical research and development and developing pharmaceutical preparations under the ANAVEX name for the treatment of neurological conditions including Alzheimer's disease in the United States since at least January 1, 2007.

The pending civil action accordingly involves issues which are involved in this proceeding, namely whether Anavex Life Sciences Corp. has been harmed by Applicant's use of the ANIVAX trademark. The determination of these issues by the District Court will likely be dispositive of the issues involved in this proceeding.

Opposer therefore respectfully requests suspension of these proceedings pending determination of the civil action pursuant to 37 CFR § 2.117(a). *Whopper-Burger, Inc. v. Burger King Corp.*, 171 U.S.P.Q. 805, 807 (TTAB 1971). (Suspending Opposition proceedings in light of pending federal litigation because "the outcome of the civil action will have a direct bearing on the question of the rights of the parties herein and may in fact completely resolve all the issues.")

Please charge the opposition fee to deposit account No. 50-1662.

Respectfully Submitted,

Dated: April 7, 2016

By: Thomas M. Saunders/
Thomas M. Saunders
Attorney for Opposer

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CERTIFICATE OF SERVICE

I here certify that a true copy of the foregoing OPPOSER'S MOTION TO SUSPEND THE PROCEEDINGS PENDING CIVIL LITIGATION was served on Anivax, Inc (Anivax, Inc. having yet to identify counsel) on this 7day of April 2016 by sending the same via Email and FedEx courier service to:

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CEO
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and

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/Thomas M. Saunders/

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Attorneys for Plaintiff Anavex Life Sciences Corp.

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Plaintiff ANAVEX LIFE SCIENCES
CORP.,

PLAINTIFF,

v.

ANIVAX, INC DBA ANIVAX
CORPORATION ARIZONA,

DEFENDANT.

Case No.

**COMPLAINT FOR FALSE DESIGNATION
OF ORIGIN UNDER THE LANHAM ACT
AND UNFAIR COMPETITION; DEMAND
FOR JURY TRIAL**

For its Complaint, Plaintiff Anavex Life Sciences Corp. ("Anavex") avers
as follows:

PARTIES

1
2
3 1. Anavex is a limited liability company duly organized and existing
4 under the laws of the State of Nevada, with its corporate headquarters and
5 principal place of business at 51 West 52nd Street, New York, New York 10019-
6 90405.

7
8 2. Anavex is informed and believes, and on that basis avers, that
9 defendant Anivax, Inc DBA Anivax Corporation Arizona (“Anivax”) is, on
10 knowledge or belief, a corporation organized and existing under the laws of
11 Arizona, with its principal place of business at 1303 E University Boulevard,
12 #20701, Tucson, Arizona, 85719.

13
14 **Background**

15
16 3. Anavex is the owner of all rights, title and interest in and to
17 Application Serial No. 86/768671 for the mark ANAVEX in connection with
18 pharmaceutical preparations for the treatment of neurological conditions,
19 including Alzheimer’s disease in International Class 5, filed September 25, 2015,
20 based on a date of first use at least as early as January 1, 2007. *See* Exhibit A.

21
22 4. Anavex is the owner of Application Serial No. 86/768699 for the
23 mark ANAVEX in connection with pharmaceutical research and development in
24 International Class 42, filed September 25, 2015, based on a date of first use at
25 least as early as January 1, 2007. *See* Exhibit B.

1 5. Anavex is advertising and offering its pharmacological research and
2 drug development services at the home page address of <http://www.anavex.com>.
3 See Exhibit C.

4
5 6. Anavex has been in the business of pharmaceutical research and
6 development and developing pharmaceutical preparations under the ANAVEX
7 name for the treatment of neurological conditions including Alzheimer's disease
8 since at least January 1, 2007

9
10 7. Examples of national and international use of the name ANAVEX in
11 pharmaceutical business and research include the following non-limiting
12 examples.

13
14 a. On January 25, 2007 Anavex publically announced that Dr. Panos
15 Kontzalis, of Basel, Switzerland, was appointed as Chief Executive Officer
16 and member of the Board of Directors.

17
18 b. On January 31, 2007 Anavex announced that it acquired a portfolio
19 of three patents and one patent application covering drug candidates
20 intended to be further developed through commercialization targeting the
21 areas of neurological diseases and cancer. The patents were assigned by Dr.
22 Alexandre Vamvakides, of Paris, France, who was appointed as Chief
23 Scientific Officer and member of the Board of Directors.

24
25 c. On April 2, 2007 Anavex announced that it entered into a research
26 agreement with the department of Pharmacology and Biological Sciences at
27 Paris 5 University-Rene Descartes, France, to investigate the
28

1 neuroprotective action of Anavex's tetrahydrofuranic compound ANAVEX
2 19-144 (AE37Met) in transient focal cerebral ischemia animal models.

3
4 d. On May 23, 2007 Anavex announced that in vivo preclinical data
5 presented in a poster at the 8e Colloque de la Société des Neurosciences
6 meeting, Montpellier, France, showed that ANAVEX 1-41 and ANAVEX
7 2-73 were new potent muscarinic ligands with a high affinity for the sigma-
8 1 receptor-suggest a possibly important neuroprotective and anti-amnesic
9 efficacy in Alzheimer's Disease.

10
11 e. A poster presentation was made at Neuroscience from Nov. 3 through
12 7, 2007 in San Diego, Calif entitled "Anti-amnesic and neuroprotective
13 activities of ANAVEX 2-73, a new aminotetrahydrofuran derivative acting
14 as a mixed muscarinic/sigma-1 ligands, in pharmacological and
15 pathological models of amnesia," including work by Dr. Alexandre
16 Vamvakides, of Anavex.

17
18 f. Dr. Alexandre Vamvakides, of Anavex co-authored a paper in J
19 Psychopharmacol. 2011 Aug;25(8):1101-17 entitled "Anti-amnesic and
20 neuroprotective potentials of the mixed muscarinic receptor/sigma 1 (σ 1)
21 ligand ANAVEX2-73, a novel aminotetrahydrofuran derivative."

22
23 g. A poster entitled "Mitochondrial protection is induced by the novel
24 tetrahydrofuran derivative ANAVEX2-73 after ICV injection of oligomeric
25 A β 25-35 peptide in mice, a nontransgenic Alzheimer's disease model" was
26 presented at Neuroscience 2012, October 13-17, 2012, in New Orleans.

1 h. Anavex drugs were further the subject of “A Phase 1 Dose Escalation
2 Study to Investigate Safety, Tolerability, and Pharmacokinetics of
3 ANAVEX 2-73 in Healthy Male Subjects.” Presented at CNS Summit
4 2014, Boca Raton, FL

5
6 i. Further, Anavex drug data entitled “Novel Anti-Seizure Compound
7 ANAVEX 2-73 a Sigma-1 Receptor Agonist in Multiple Seizure Models”
8 was presented at The American Epilepsy Society Annual Meeting 2015,
9 Philadelphia, PA.

10
11 8. Anavex has been listed on the public exchange (OTCBB:AVXL)
12 since January of 2007 and on the NASDAQ exchange as of October of 2015.

13
14 9. Anavex engages in research and drug development often in
15 conjunction with universities and other academic institutions.

16
17 10. Anavex plans to sell its drugs to physicians, health care providers,
18 drug distributors and to the general public.

19
20 **JURISDICTION AND VENUE**

21
22 11. Jurisdiction is founded on federal question under the Lanham Act.
23 This Court has jurisdiction under 28 U.S.C. § 1338(b) in that said claims are
24 joined with a substantial and related claim under the Trademark Laws of the
25 United States, 15 U.S.C. §§ 1501 *et seq.*

26
27 12. This Court has personal jurisdiction over Anivax as Anivax is
28 regularly engaged in business in this State and District, for example, offering to

1 manufacture, manufacturing, offering to sell, and selling, animal vaccines under
2 the ANIVAX mark.

3
4 13. Venue in this District is proper based on 28 U.S.C. §§ 1391 and
5 1400. Anivax does business, has infringed, and continues to infringe the
6 ANAVEX trademark in this District.

7
8 **CLAIM FOR RELIEF**

9 **COUNT ONE (Unfair Competition by Infringement of Common-Law**
10 **Rights)**

11
12 14. Plaintiff realleges as fully set forth the allegations of Paragraphs 1
13 through 13.

14
15 15. Anivax seeks to register ANIVAX as a trademark for research and
16 development of vaccines and medicines in International Class 42 based on a U.S.
17 Trademark application filed on February 20, 2015, and designated Serial No.
18 86/540771.

19
20 16. On January 14, 2016, Application Serial No. 86/768699 for the
21 mark ANAVEX received a notice of suspension in view of the ANIVAX
22 application under Trademark Act Section 2(d) on the basis of a likelihood of
23 confusion,

24
25 17. Anivax is, on knowledge and belief, the owner of the domain name
26 "anivax.com" as registered on September 15, 2015 by GODADDY.COM which
27 includes the ANIVAX mark. *See* Exhibit D.
28

1 18. Anivax is advertising and offering for sale animal vaccines, custom
2 manufacture animal vaccines, and veterinary biologics under the ANIVAX mark
3 at the home page address of <http://www.anivax.com>. See Exhibit E.

4
5 19. Anavex's common law priority date to ANAVEX precedes the
6 Applicant's claimed date of first use of ANIVAX, and, upon information and
7 belief, precedes any priority date upon which Anivax may rely.

8
9 20. The pronunciation of ANIVAX and ANAVEX are virtually
10 identical.

11
12 21. The spelling of ANIVAX and ANAVEX are quite similar with the
13 differences being two vowel substitutions: an "I" for an "A" and an "A" for an
14 "E."

15
16 22. Services identified by Anivax are virtually identical to services
17 offered by Anavex, namely medicines.

18
19 23. On information and belief, channels of trade for Anivax's goods
20 include, at a minimum, drug distributors and the general public.

21
22 24. Defendant's ANIVAX trademark so resembles Anavex's
23 ANAVEX mark when used in connection with the goods identified in the
24 application to cause confusion, to cause mistake, or to deceive.

25
26 25. Purchasers and prospective purchasers are likely to mistakenly
27 believe that the goods Anivax offers under the ANIVAX trademark are produced,
28

1 sponsored, endorsed, or approved by Anavex, or are in some way affiliated,
2 connected, or associated with Anavex, all to the detriment of Anavex.

3
4 26. Anavex, by this Complaint and otherwise, has notified Anivax of its
5 infringement, which has been and continues to be willful and deliberate.

6
7 27. Anavex has been and continues to be damaged by the above-alleged
8 infringement and will suffer irreparable harm until such time as that infringement
9 is enjoined.

10
11 28. Said acts of Anivax constitute unfair competition and an
12 infringement of Anavex's common law rights in the mark ANAVEX.

13
14 29. Continuously since on or about January 1, 2007 Anavex has used
15 the mark ANAVEX to identify goods and services and to distinguish them from
16 those made and sold by others, by, among other things, prominently displaying the
17 mark ANAVEX on its website and press releases, conference posters, and
18 letterhead, throughout the United States.

19
20 30. ANAVEX goods and advertising have been distributed in the trade
21 area where defendant is doing business.

22
23 **COUNT TWO (Violation of the Lanham Act by Use of False**
24 **Designation in Interstate Commerce**

25
26 31. Plaintiff realleges as fully set forth the allegations of Paragraphs 1
27 through 30.

1 32. Anivax has caused vaccines and development services associated
2 with vaccines, vaccine development, and biologics to enter into interstate
3 commerce with the designation ANIVAX connected therewith.

4
5 33. Said use of ANIVAX is a false designation of origin which is likely
6 to cause confusion, to cause mistake and to deceive as to the affiliation,
7 connection or association of the defendant with plaintiff and as to the origin,
8 sponsorship, or approval of such vaccines, vaccine development, and biologics by
9 Anavex.

10
11 34. These acts are in violation of 15 U.S.C. §§ 1125(a) in that defendant
12 has used in connection with goods and services a false designation of origin, a
13 false or misleading description and representation of fact which is likely to cause
14 confusion, and to cause mistake, and to deceive as to affiliation, connection, or
15 association of ANIVAX with ANAVEX and as to the origin, sponsorship, and
16 approval of defendant's goods and services and commercial activities by plaintiff.

17
18 35. By reason of defendant's acts alleged herein, plaintiff has and will
19 suffer damage to its business, reputation, and goodwill and the loss of sales and
20 profits plaintiff would have made but for defendant's acts.

21
22 36. Defendant threatens to continue to do the acts complained of herein,
23 and unless restrained and enjoined, will continue to do so, all to Plaintiff's
24 irreparable damage.

25
26 37. It would be difficult to ascertain the amount of compensation which
27 could afford plaintiff adequate relief for such continuous acts, and a multiplicity
28 of judicial proceedings would be required.

Wherefore, Plaintiff Anavex. prays for judgment as follows:

- COMPLAINT

1 5. For such other and further relief as this Court may deem just and
2 proper.

3
4 Dated: March 10, 2016

ROBERT S WOLKIN

5
6 By:

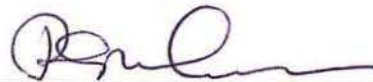

Robert S. Wolkin
Attorney for Plaintiff Anavex Life Sciences
Corp.

DEMAND FOR JURY TRIAL

Plaintiff, AnavexLife Sciences Corp., hereby demands trial by jury.

Dated: March 10, 2016

By:



Robert S. Wolkin
Attorneys for Plaintiff Anavex Life Sciences
Corp.

EXHIBIT A



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ANAVEX

Word Mark	ANAVEX
Goods and Services	IC 005. US 006 018 044 046 051 052. G & S: Pharmaceutical preparations for the treatment of neurological conditions including Alzheimer's disease. FIRST USE: 20070101. FIRST USE IN COMMERCE: 20070101
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	86768671
Filing Date	September 25, 2015
Current Basis	1A
Original Filing Basis	1A
Owner	(APPLICANT) Anavex Life Sciences Corp. CORPORATION NEVADA 7th Floor 51 West 52nd Street New York NEW YORK 10019
Attorney of Record	Thomas M. Saunders
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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ANAVEX

Word Mark ANAVEX
Goods and Services IC 042. US 100 101. G & S: Pharmaceutical research and development. FIRST USE: 20070101. FIRST USE IN COMMERCE: 20070101
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 86768699
Filing Date September 25, 2015
Current Basis 1A
Original Filing Basis 1A
Owner (APPLICANT) Anavex Life Sciences Corp. CORPORATION NEVADA 7th Floor 51 West 52nd Street New York NEW YORK 10019
Attorney of Record Thomas M. Saunders
Type of Mark SERVICE MARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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Welcome to AnavexTM Life Sciences Corp.

Anavex Life Sciences Corp. is a publicly traded biopharmaceutical company dedicated to the development of differentiated therapeutics for the treatment of neurodegenerative diseases including Alzheimer's disease, other central nervous system (CNS) diseases, pain and various types of cancer.



[Corporate Presentation](#)
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Anavex corporate presentation at 18th Annual BIO CEO & Investor Conference on February 9, 2016



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Reverse stock split associated with uplisting to Nasdaq Capital Market.

Video

Anavex rings the Nasdaq Stock Market Closing Bell on Oct. 30, 2015 [ANAVEX 2-73 Preclinical Data in New Indication to be Presented at](#)

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Events

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Friday, February 26, 2016

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Name Server: NS1.DSREDIRECTION.COM
Name Server: NS2.DSREDIRECTION.COM
Status: clientDeleteProhibited <https://www.icann.org/epp#clientDeleteProhibited>
Status: clientRenewProhibited <https://www.icann.org/epp#clientRenewProhibited>
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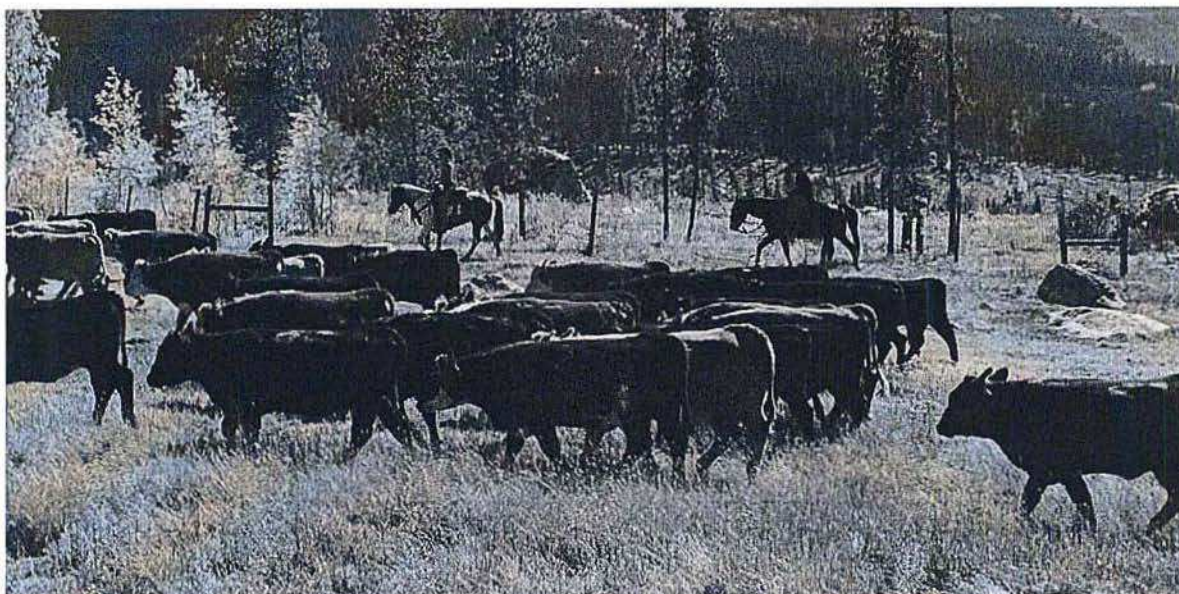
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EXHIBIT E

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Company:



When commercially available veterinary vaccines are not efficacious in the face of a disease outbreak, then autogenous, or custom vaccines are prescribed by veterinarians. The etiology of influenza in humans provides a descriptive analogy to the use of autogenous veterinary vaccines. Each year, humans become susceptible to infection with influenza virus. If a person were infected with or vaccinated against influenza virus in a previous year, then in subsequent years they would be immune to that strain of the virus.

Mission Statement

Anivax develops, manufactures and markets safe and efficacious veterinary vaccines for the purpose of protecting food animals from disease and to reduce the risk of contaminated meat products intended for human consumption.



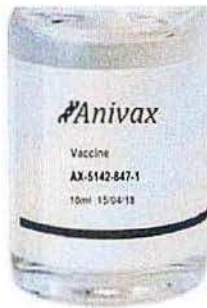
March 1, 2016 - Anivax seeks a partner to launch an autogenous operation in Tucson, Arizona, USA.

However, each year wild-type flu viruses develop different antigenic profiles. Hence, a convalescent patient will not be immune to infection from a flu strain that has changed. Annually, researchers from around the world decide which antigenic flu virus profile is most prevalent, and the strain is cultivated, inactivated, bottled and distributed for use. The vaccine will protect against a homologous infection, but individuals not vaccinated or exposed to a heterologous wild-type strain will not be immune.

"A proposed bill in the United States Congress would limit the use of antibiotics in animal feed. Without proper vaccination, this may increase the risk of slaughtered animals harboring pathogenic bacteria thus representing a risk to human food safety. Anivax's purpose is to manufacture safe and efficacious veterinary vaccines that allow producers to protect food animals from disease, while limiting use of antibiotics. The result is healthier animals, less antibiotics and a reduced risk of contaminated meat products intended for human consumption." John Buttery, CEO Anivax, Tucson, Arizona, USA.



Similarly, animals are also susceptible to varying wild-type disease causing agents that persistently change. Commercial vaccines which have been proven efficacious and approved for marketing by the USDA are commonly used to control disease. However, strains of bacteria and viruses which have



varying antigenic profiles from those used to make commercially licensed vaccines cause significant disease annually. Hence, the USDA allows the manufacture of custom vaccines.

Autogenous vaccines are made by isolating, cultivating, inactivating, and bottling the disease causing organism. This vaccine is then used to immunize the herd of animals from which it was isolated. Vaccines such as these can be

manufactured and distributed to a supervising veterinarian within 4-8 weeks of request. The USDA does not require efficacy testing of autogenous vaccines. Therefore, these products can be expedited to the market-place. Anivax will manufacture and market autogenous vaccines as a short term return

on investment strategy. Once a request for vaccine production has been received, then it will take ~4 weeks for shipment to the end-user.

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Vision Statement

Anivax has a clear vision concerning the future of its activities with autogenous vaccines. The cornerstones of this vision include:

- Preferred partner for cattle, swine and poultry veterinarians & farms, concerning autogenous vaccines.
- USDA/CVB certified facility for animal diagnostics and autogenous vaccine production.
- Holistic approach through team competence in critical aspects of animal health including genetics, management, nutrition, diagnostics, vaccination.
- Manufacturer of vaccines to provide a first line of defense against emerging diseases and help allow a timely response to emergency disease situations.
- Future oriented production facility and quality standards. This includes a certified lab at Anivax and a relationship with the UA Diagnostic Laboratory.
- Pro-active interface between science & practice. This includes hiring the top students and professionals in the biologics and veterinarian industry.

Anivax is establishing operations in Tucson, Arizona, USA to manufacture and market bacterial and viral autogenous veterinary biologics to practicing veterinarians. These products will be prepared for use by or under the supervision of a veterinarian. Their use will be limited to the scope of the veterinarian-client-patient relationship. All products are manufactured under the direction of a competent and experienced staff with expertise in microbiology, immunology, vaccinology and the development, scale-up and production of veterinary biologics.

Anivax develops products for the purpose of protecting domestic animals from diseases caused by bacteria and viruses, while ensuring food safety for humans. Our strategy for ensuring the production of unique, efficacious and safe vaccines developed from years of vaccine development and manufacturing experience. Quality technical support, good diagnostic testing and proper vaccine formulations are the keys to providing our clients with superior products.

Product manufacturing and use are regulated by the USDA-Animal and Plant Health Inspection Service and accordance with regulations put forth in the Code of Federal Regulations.

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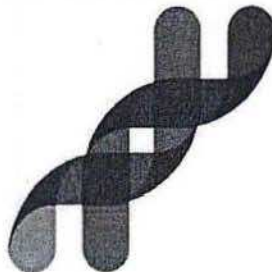
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